

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF CALIFORNIA

3 BEFORE THE HONORABLE SUSAN ILLSTON, JUDGE

4 -----)  
 5 JOY NWABUEZE, individually and )  
 6 on behalf of a class of )  
 7 similarly situated individuals, )

8 Plaintiffs, )

9 v. )

10 AT&T, INC., et al., )

11 Defendants. )

No. C 09-1529 SI

San Francisco, California  
 Friday, November 15, 2013  
 (28 pages)

12 TRANSCRIPT OF PROCEEDINGS

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1 Friday, November 15, 2013

2 (10:35 a.m.)

3 (In open court)

4 **DEPUTY CLERK:** Calling Civil 09-1529, Nwabuezze vs.  
5 AT&T.

6 And, Judge, I need to get one attorney on the phone.

7 **THE COURT:** Who are we getting on the phone?

8 **DEPUTY CLERK:** Richard Goldberg.

9 **MR. JACOBS:** Good morning, your Honor, John Jacobs on  
10 behalf of the class.

11 **MS. POLIDORA:** Roxane Polidora for AT&T. And with me  
12 today is Mr. Walid Abdul-Rahim for AT&T.

13 **THE COURT:** Are your folks going to say anything?

14 **MR. JACOBS:** My colleagues are co-class counsel Bryan  
15 Kolton and David Schachman.

16 **DEPUTY CLERK:** This is Tracy with Judge Illston's  
17 chambers. Can you state who you represent, please?

18 **MR. GOLDBERG:** Yes, the United States of America.

19 **THE COURT:** Good morning, Counsel. This is Judge  
20 Illston. I'm here with counsel for the plaintiffs in this  
21 case, and counsel for the defendant.

22 **MR. GOLDBERG:** Good morning, your Honor.

23 **THE COURT:** Good morning. This is the motion for  
24 final approval of the class settlement and approval of the fee  
25 request. I had a few questions first for counsel in this

1 case, and then I'll be happy to hear anything that counsel for  
2 the United States of America wants to add. But what is an  
3 enhanced service as opposed to some other kind of service?

4 **MR. JACOBS:** I will yield to AT&T to state it more  
5 accurately. But it is a non-basic telephone service. For  
6 instance, diet plans, astrology, web-hosting -- all of these  
7 things are enhanced services.

8 **THE COURT:** What's a phone service but not an  
9 enhanced phone service?

10 **MR. JACOBS:** Could you say that again?

11 **THE COURT:** You said there's going to be a schedule  
12 of enhanced, and enhanced ones are not going to go forward,  
13 and AT&T will explain the difference, no longer allows  
14 enhanced services, and it will agree to provide customers an  
15 informational bulletin regarding the kinds of third-party  
16 billing that is still permitted. So what kind of third-party  
17 billing is still permitted?

18 **MR. JACOBS:** For instance, I believe they will  
19 continue to provide Earthlink, AOL, certain long-distance  
20 carriers -- those will continue. The enhanced services, I  
21 think that's one of those marketing names. It's also called,  
22 quote, miscellaneous services. And those are the kinds of  
23 things that that have caused all the problems. Our client, I  
24 believe, was billed for a voicemail box when she already had  
25 it. And I can't remember the other kinds of charges, but

1 these things -- as I said, they run the spectrum from  
2 astrology to web-hosting, as in 821.

3 **THE COURT:** Right. Miss Polidora?

4 **MS. POLIDORA:** Yes. I wanted to clarify: Enhanced  
5 services actually does include AOL and many legitimate  
6 businesses, banks, Earthlink. They're all enhanced services.  
7 Anything Internet-based, essentially.

8 **THE COURT:** And that won't be permitted any longer?

9 **MS. POLIDORA:** We have already exited that business  
10 last spring.

11 **THE COURT:** So what might be third-party billing  
12 policy.

13 **MS. POLIDORA:** The only thing that remains is toll  
14 charges. Toll services.

15 **THE COURT:** So enhanced is anything non --

16 **MS. POLIDORA:** Toll.

17 **THE COURT:** Toll.

18 **MR. GOLDBERG:** Can I interject here?

19 **THE COURT:** Every time, you need to say your name so  
20 the court reporter can get it.

21 **MR. GOLDBERG:** Yes, your Honor. This is Richard  
22 Goldberg representing the United States of America. And I  
23 appreciate your allowing me to appear by phone.

24 I could be wrong about this, but my understanding was AT&T  
25 was going to continue to bill for what are called

1 telecommunications services as distinguished from enhanced  
2 services. Telecommunications services could include things  
3 like voicemail services -- I'm happy to be contradicted by  
4 AT&T's counsel if that's not the case. But I was under the  
5 impression that telecommunications services that dealt with  
6 the phone in some way would still be subject to third-party  
7 billing on AT&T bills.

8 **MS. POLIDORA:** That's not correct. It's only toll,  
9 directory assistance. There was one -- talking about  
10 voicemail services? No, we've exited that business.

11 **MR. GOLDBERG:** Okay. I appreciate your clarifying  
12 that for me.

13 **MS. POLIDORA:** Thank you.

14 **THE COURT:** Thank you.

15 What's the last date for filing a claim and the last date  
16 for requesting a statement of your prior bills?

17 **MR. JACOBS:** The last date for requesting a bill is  
18 December 2. Then the last date for filing a claim is the  
19 later of December 2 or 30 days after you are sent your billing  
20 summary. So there could be people getting billing summaries  
21 in January or February and having 30 days to file. So it  
22 could go out into March.

23 **THE COURT:** Okay. And one other question I have: So  
24 the data that we have now that you've provided, having to do  
25 with --

1           **MR. JACOBS:** I can tell where you we are now.

2           **THE COURT:** That would be good. Because it's --

3           **MR. JACOBS:** As of the end of last week,  
4 approximately \$32 million in claims had been filed for claims  
5 under \$250,000. There are quite a few claims in excess of  
6 that. But we're not counting them because some of them are  
7 just people writing down, you know, silly numbers. But we do  
8 know that there will be claims, very substantial. For  
9 instance, in the Verizon case, we had one school district that  
10 filed a valid claim for \$1.2 million. And we know that some  
11 very large billing summaries have just gone out to some  
12 Fortune 100 companies, and I don't think they filed their  
13 claims yet. But there are substantial things out there.

14           And as of -- and that --

15           **THE COURT:** So of the 32 million, do you know yet  
16 whether any of those claims is going to be objected to?

17           **MR. JACOBS:** No, we don't know. We don't know. And  
18 I should say, your Honor, that number relates to about 80  
19 percent of the claims that have been filed. In other words,  
20 there are another 18 or 20 percent that haven't yet been  
21 processed and are not included in that \$32 million number.

22           **THE COURT:** All right. One thing you could do for me  
23 that would be helpful, and I don't know if it would be --  
24 whatever would work for you -- twice a month, once a week,  
25 twice a month, I'd like a, just a statement of how many claims

1 have been -- how many billing summaries were requested and  
2 sent, and if there are some that have been requested and not  
3 sent, I'd like to know that. And how many claims have been  
4 filed. And how many challenges, if any, have been filed.

5 **MR. JACOBS:** Well, challenges won't start until 120  
6 days after the December 2 date. But I can tell your Honor  
7 that some, I believe 800 -- over 800,000 billing summaries  
8 have been requested. And that -- no, I'm lying. Over 500,  
9 over 500,000.

10 **THE COURT:** That's what you had said in your papers.  
11 And December 2nd is the last date for ask for it. By  
12 December 2nd you'll know the universe, right?

13 **MR. JACOBS:** Right, we'll know then. And there are  
14 some number I believe in the 40,000 range that are being  
15 processed. Because it's quite a procedure for AT&T to go  
16 through all these bills and then get the information digested  
17 for people. So there's about 40,000 in process.

18 **THE COURT:** It's that that I'd like to be kept up to  
19 speed on, if I could.

20 **MR. JACOBS:** Okay.

21 **THE COURT:** And, as I say, I don't mean to burden you  
22 unduly, but it would help me to know what those numbers look  
23 like.

24 **MR. JACOBS:** Absolutely. Absolutely.

25 **THE COURT:** Okay. And then my other question is



1 this: Jumping ahead to the fees -- and in a minute I'll give  
2 people an opportunity to address the question of whether the  
3 settlement should be approved itself -- but on the fees,  
4 they're keyed in in some way to the Moore case, right?

5 **MR. JACOBS:** Yes.

6 **THE COURT:** So what am I supposed to do about that?  
7 Because it hasn't been decided, and there's no particular end  
8 in sight.

9 **MR. JACOBS:** I believe your Honor can appropriately  
10 award us, say, I hereby award plaintiff's counsel the lesser  
11 of "X" dollars -- I hope it's 5.5 million; or whatever is  
12 awarded in the Moore case. Frankly, we're expecting a  
13 decision any day now. Judge Corley heard argument, asked for  
14 some supplemental briefs, got them, and said she would rule  
15 very quickly. So we expect to see something imminently.

16 **MS. POLIDORA:** Your Honor, if I may address that  
17 point. You're correct that Section 14(a) of the settlement  
18 agreement is now inconsistent with what the parties  
19 anticipated would happen. We thought that the Moore decision  
20 would have come out by now. We would request that we could  
21 approach it two ways, but we do think it needs to be addressed  
22 formally, and that would either be by stipulation and order  
23 between the parties and the court, changing that part of the  
24 settlement -- or it could be in the Court's final approval  
25 order -- that no fees will be awarded until the later of the

1 effective date of this judgment or the effective date of the  
2 Moore decision on fees, whichever is later.

3 **MR. JACOBS:** Your Honor, that's a sidetrack, but I  
4 will say that wasn't the agreement we made. And -- for  
5 instance, under that proposal, if, God forbid, the Verizon  
6 case ultimately did not become final, that means we don't get  
7 paid? I don't think so. I mean, I think, your Honor, this is  
8 something that will take care of itself.

9 **THE COURT:** I think it will. But you can see that if  
10 you think too closely about it, it could get bollixed up.

11 **MR. JACOBS:** It could, and if it does, we can address  
12 it, but I don't think now is the time.

13 **THE COURT:** Well, perhaps Judge -- I mean maybe Judge  
14 Corley will act with dispatch. I'm just concerned that  
15 then -- does that have to go back up to Judge Armstrong? And  
16 I don't know what happens there. And I don't know who's going  
17 to be complaining about it.

18 **MS. POLIDORA:** I understand it is going to go back to  
19 Judge Armstrong.

20 **MR. JACOBS:** It doesn't have to. If anybody takes  
21 a -- she's very clear in her -- in the transcript that, you  
22 know, Judge Corley will decide it. And if somebody takes an  
23 appeal to me, then so be it.

24 **THE COURT:** Okay. Well, thank you. That helps me  
25 somewhat.

1 All right. First, now, let's talk about the settlement  
2 itself. I have reviewed all the materials that you've given  
3 me. I've reviewed the materials that were provided by the  
4 United States of America through the DOJ and the FTC, and I've  
5 reviewed the materials concerning objections. I'm prepared at  
6 this time to overrule all the objections and approve the  
7 settlement, but I'll be happy to hear anything you want to  
8 add.

9 Mr. Jacobs?

10 **MR. JACOBS:** No, your Honor. I know that you've read  
11 everything. This is -- as I told you at the preliminary  
12 approval hearing, this is a settlement that I'm proud of, and  
13 I believe the Court has every reason to be proud of. This is  
14 going to actually put money in the pockets of customers. And  
15 I predict more money than all the cases in the last 15 years  
16 combined, excluding the Verizon case that we just resolved.  
17 It does something that, except for the Verizon case, has never  
18 been done. It provides people free billing summaries so they  
19 know -- they're not left on their own. The response, I  
20 believe, has been overwhelming.

21 The concerns expressed by the government about, would  
22 anyone read the notice, would anyone understand the notice,  
23 would anyone participate, has been answered. They have read  
24 it, they have participated, they're continuing to. I'm  
25 advised that -- by the settlement administrator that they're

1 currently getting 8,000 pieces of mail a day, and they're  
2 getting about 8,000 claims a week now, and it's picking up,  
3 because the deadline is approaching, and all these billing  
4 summaries have started going out. So it is being very widely  
5 participated in. You had 25 pieces of paper that, out of an  
6 abundance of caution, we included as possible objections, out  
7 of 23 million. That's one ten thousandth of a percent.

8 The class has overwhelmingly supported this and  
9 participated in it. And I believe it very much merits -- you  
10 know, we think back, Judge, to the first day I appeared before  
11 you on the motion to dismiss, and it addressed -- defendant's  
12 motion to dismiss had restated the RICO claim. And your  
13 Honor, on your own, said, You know, I was just thinking about  
14 that this morning. How are you going to serve by class? And  
15 that's the problem that has been faced all along. These cases  
16 do not get certified.

17 I believe we have good arguments that should, particularly  
18 looking at Judge Henderson's case in Herrera, but you'd have  
19 to --

20 **THE COURT:** 23 million is a lot of people.

21 **MR. JACOBS:** Yes, it is. You're right. There's no  
22 question. It's a very, very difficult thing. And it would  
23 have been imprudent of us, I believe, to not make a settlement  
24 like this if we could. I'm very proud of it. I think it  
25 demands the Court's final approval.

1 I'll be willing to speak to anything else.

2 **THE COURT:** Miss Polidora, do you want to be heard?

3 **MS. POLIDORA:** No, your Honor.

4 **THE COURT:** Mr. Goldberg, did you want to be heard?

5 **MR. GOLDBERG:** Briefly, your Honor. I think our  
6 brief speaks for itself. It's -- there's no question that  
7 there will be some consumers, a number of consumers that will  
8 be reimbursed pursuant to the settlement. But the question is  
9 whether there are many, many, many consumers that could in  
10 relatively easy fashion be afforded relief as well.

11 The notice we believe does not communicate to many  
12 consumers the fact that there is the possibility of  
13 reimbursement under the settlement. The nature of this case  
14 is unique in that there are few, if any, class action lawsuits  
15 that we know of where the offense, where the violation was  
16 because of consumers not noticing the charges in a phone bill  
17 or in a bill itself. And as a result, there's a fundamental  
18 problem with notifying consumers via billing insert. I'm sure  
19 you saw our argument to that extent in our brief.

20 **THE COURT:** I did.

21 **MR. GOLDBERG:** So I won't really go further on that.

22 Again, it would be very simple for AT&T, in communicating  
23 with consumers, to notify them that they had been charged  
24 third-party charges in their bill, and that these are what  
25 they were, and if you believe that those charges are

1 incorrect, then you should initiate your process down the road  
2 to trying to get reimbursement. Instead, the notification  
3 doesn't do that. Instead it says, We're not telling you  
4 whether you've been charged in the past. We're just telling  
5 you you might have been charged, and that might have not have  
6 been sufficient. So consumers are left to wonder or to  
7 check -- you know, for those consumers that maybe keep their  
8 old bills, they can look back. But for the probably vast  
9 majority of consumers who don't keep their bills, they're left  
10 to wonder whether they might have had a 15 or a 20 or a \$30  
11 charge on their bill at some point in the past and whether  
12 they should take their time to go down this long and arduous  
13 process of trying to determine, A, whether they were charged,  
14 and, B, whether it was a correct charge or not.

15 Last thing is this uncertainty in terms of the effect of  
16 the settlement. Whether this could have an effect on future  
17 government ability to collect restitution for consumers would  
18 just be flat wrong. If that was the effect of what was going  
19 on here, it would be very simple for the parties to disagree  
20 that this lawsuit should have no effect on consumer's ability  
21 to get restitution via a government action. They haven't done  
22 that. And they refuse to do that. And again, it would be  
23 very simple for them to say, unless -- look, if a consumer  
24 actually got a refund from this class action, and that was a  
25 valid refund, there's no reason why a government action should

1 get them a second refund. But if this class action did not  
2 produce a refund for a consumer and it's later determined that  
3 that consumer was harmed by cramming, then why wouldn't that  
4 aggregator and/or the merchant who committed the cramming have  
5 to pay restitution?

6 Again, it would be very simple for the parties to say, We  
7 agree that this lawsuit should have no effect on those  
8 circumstances. And they just haven't done that.

9 So for all those reasons, we believe that the settlement  
10 is -- really turns out not to be fair to consumers.

11 **THE COURT:** Mr. Goldberg, is there any likelihood  
12 that the FTC or the DOJ or anybody else is actually going to  
13 seek and obtain restitution for the -- for these folks?

14 **MR. GOLDBERG:** I can't speak to any current  
15 investigations. I can't confirm or deny whether the  
16 Department of Justice has any ongoing cramming investigations  
17 of merchants or aggregators, much less know whether any  
18 particular U.S. Attorney's offices have investigations. But  
19 the FTC -- I'm sorry, I'm not there. The FTC is there?

20 **THE COURT:** Well, it didn't make an appearance.

21 **MR. GOLDBERG:** Oh.

22 **THE COURT:** She's just -- oh, come on in.

23 **MR. GOLDBERG:** The FTC has a current action against  
24 an aggregator named BSG, a massive contempt action for -- I  
25 believe it's 10's or 100's of millions of dollars, and that

1 is -- I have not heard the status of that within the last  
2 month or so. But last I heard, that was ongoing. And there  
3 is ultimately a -- we consider it to be a good possibility  
4 that there would be restitution ordered as a result of that  
5 case.

6 **THE COURT:** Okay. Thank you.

7 Does the FTC want to make a statement?

8 **MS. KIM:** We would. Thank you, your Honor.

9 **THE COURT:** Let me say -- I'm going to interrupt this  
10 proceeding for a second. The criminal calendar, as a  
11 practical matter is not going to begin until 11:30, so those  
12 of you here for that, we're not going to be able to start for  
13 a few more minutes. Thank you.

14 **MS. KIM:** I'm an attorney for the Federal Trade  
15 Commission, Washington, D.C. I appreciate the opportunity to  
16 speak here.

17 The settlement releases virtually everyone involved in  
18 this cramming case, and this is one of the key concerns that  
19 the Federal Trade Commission had, which is in part why we  
20 filed our amicus. It may have an impact on law enforcement  
21 efforts. In fact, this very settlement is actively  
22 interfering with a law enforcement action now, as counsel for  
23 the DOJ just referenced. The FTC is currently litigating a  
24 contempt action against --

25 **THE COURT:** That's a law enforcement action, you say?



1           **MS. KIM:** Yes. The FTC's currently litigating a  
2 contempt action against BSG, one of the largest billing  
3 aggregators in the nation, and it's an aggregator that's one  
4 of the entities covered by the release in this class action.  
5 And in that case, BSG is arguing, based on this settlement  
6 agreement and the release that it contains, that the FTC  
7 cannot recover any monetary redress for consumers, regardless  
8 of whether they filed a claim in this class action or, much  
9 less, got any of their money back. And to update the Court on  
10 the status of that action, it is actually -- I believe they  
11 are closing today, but they have -- they are in week two right  
12 now of the trial. This is a case in which BSG was already  
13 under an existing order regarding these very practices, and in  
14 violation of that order.

15           **THE COURT:** Well then, there's going to be lots of  
16 remedies against BSG independent of restitution to plaintiffs,  
17 right? You could presumably get fines or sanctions for  
18 contempt?

19           **MS. KIM:** This is one of the issues here. In that  
20 action, this contempt action against BSG which is being  
21 handled by the federal court in Texas, the FTC is seeking  
22 monetary redress for consumers, in part. I mean, it is a  
23 sanction for their violation of the order, but it's also --  
24 the objective is to make consumers whole, these consumers that  
25 were injured by the fraudulent billing practices. And what's

1 happening here is that BSG in that case has made this very  
2 argument to the court there, which is that the settlement  
3 agreement in this case has a preclusive effect. They are  
4 arguing -- of course, we disagree with BSG's argument.

5 **THE COURT:** I would disagree with them entirely as  
6 well.

7 **MS. KIM:** But it's very troubling they're arguing the  
8 FTC, because BSG name appears as one of the released entities.  
9 On that basis, they're arguing that BSG cannot recover  
10 monetary redress for contempt of that order.

11 **THE COURT:** That seems to me like a ridiculous  
12 argument. Doesn't that sound ridiculous to you?

13 **MS. KIM:** That is our position, your Honor. And  
14 that's why we are particularly troubled, because in this case,  
15 the very same plaintiff's counsel had negotiated a similar  
16 class action settlement in the class action against Verizon.  
17 And in that instance, the aggregators were included under the  
18 release, but they expressly modified that release to make  
19 clear that it would not -- it would exempt any monetary relief  
20 in a law enforcement action. In other words, the release in  
21 the Verizon class action was modified to make clear that the  
22 FTC and any other government agency could still obtain full  
23 restitution, disgorgement or compensation for consumers  
24 without this lawsuit -- without that lawsuit having any  
25 preclusive effect. It's language that could have been put in

1 there in this agreement as well, and for some reason the  
2 parties refused to do so.

3 And that's just -- you know, again, the FTC's position is  
4 that this settlement agreement should not have any preclusive  
5 effect, but there doesn't seem to be any reason why the  
6 parties cannot add that simple modification, that simple fix  
7 to the release to make it absolutely crystal clear that this  
8 settlement should not have any type of preclusive effect on  
9 those consumers, especially in a case such as this where you  
10 have up to 23 million consumers and it's not entirely clear  
11 that they will all go through all these steps, notice the  
12 notice, request the billing summary, actually file a claim  
13 that survives the challenge process and get their money back.

14 **THE COURT:** Okay. Thank you.

15 **MS. KIM:** Thank you, your Honor.

16 **THE COURT:** Did you want to be heard on that?

17 **MR. JACOBS:** I'll be pleased to respond to any  
18 particular specific questions you have.

19 **THE COURT:** Just the last bit. Why not do what you  
20 did in Verizon and say, But this doesn't effect law  
21 enforcement actions?

22 **MR. JACOBS:** Your Honor, this is a settlement, and it  
23 requires the agreement of both parties.

24 **THE COURT:** Okay. That's what I figured. Okay.

25 Anybody else want to be heard about objections to the

1 settlement?

2 **MS. POLIDORA:** Your Honor, would you like to hear our  
3 response to the government's objections?

4 **THE COURT:** If you'd like, sure.

5 **MS. POLIDORA:** Just briefly, your Honor, this  
6 settlement provides -- their objections seem to assume that  
7 all 23 million people had unauthorized charges on their bills.  
8 Obviously, it's AT&T's position that there are very few  
9 unauthorized charges on very few bills. Also, we have 100  
10 percent compensation going to the class. So of course the  
11 whole chain of distribution, the AT&T, the clearing houses and  
12 the third-party service providers need to be released in order  
13 for 100 percent to be paid. Because the clearing houses are  
14 the ones who are mostly funding the settlement. And if the  
15 clearing houses don't get the release and if they don't have  
16 the provision, if they have to put a provision that the  
17 government can pursue the same restitution claims against  
18 them, it's highly likely they will not fund the settlement.  
19 Just wanted to clarify that.

20 **THE COURT:** But it did in Verizon.

21 **MR. JACOBS:** Different contracts.

22 **MS. POLIDORA:** Verizon apparently had a different  
23 indemnity agreement with their clearing houses.

24 **MR. JACOBS:** We've looked at both, obviously.

25 **THE COURT:** Thank you. That matter will be

1 submitted.

2 Now, about the fees. I am troubled by the Alphonse and  
3 Gaston issue with respect to the Verizon settlement, but I'll  
4 just have to figure out what to do about that.

5 In addition, I have one overarching question, and then  
6 some specifics ones. The big one is this: There's a lot of  
7 similarities between this case and the Moore/Verizon case.  
8 How do I know who did what on what case and that there wasn't  
9 overlap and it's not being requested to be compensated on a  
10 duplicative basis?

11 **MR. JACOBS:** Besides the fact that we have filed  
12 declarations with you under penalty of perjury that we sorted  
13 this out and only count work on this case, and have made our  
14 time sheets available if the Court wants them, I can represent  
15 to your Honor that early on, conceptualizing the cases, the  
16 work was common, and we cut it in half. Thereafter, this case  
17 took on a life of its own and that case took on a life of its  
18 own. And the negotiations were wildly different in  
19 mediations.

20 And your Honor, you know how many times we came back to  
21 you -- I came back to you -- and said, you know, we should  
22 have this signed within a month. You know. Because I  
23 believed it. We had already agreed. And AT&T was an  
24 incredibly tough negotiator, and it would keep coming back and  
25 keep coming back and keep coming back, and now the notice is

1 out there and the settlement is out there. The work is  
2 unique. You know, you're helping these class members with  
3 their issues. We're working with AT&T with regard to all  
4 kinds of stuff that always comes up about notices and, Wait a  
5 minute, this seems to be a snag here that we need to work out,  
6 so that people don't have a problem. And they're very  
7 different, as it turns out.

8 Early on, as I say, conceptualizing the cases and doing  
9 the research is very similar. And that's all I can tell you.  
10 The parties made different arguments with regard to  
11 particularly the RICO claims. We negotiated injunctive relief  
12 prior to your Honor's ruling that we couldn't get anywhere,  
13 but that resulted, as your Honor saw, with a -- with the -- a  
14 single aggregator saying, Our revenue's dropped \$37 million  
15 last year because of these new contracts that AT&T put out,  
16 which are as a result -- that's what was required by our  
17 negotiations.

18 Is that responsive, your Honor?

19 **THE COURT:** It does. It does.

20 **MR. JACOBS:** And I should tell your Honor, at this  
21 point, we're north of \$6 million in time and expenses. And  
22 it's only going to increase. So....

23 **THE COURT:** All right. And I have some less -- is  
24 anybody here from Lief Cabraser?

25 **MR. HELLER:** Yes, your Honor. Roger Heller.

1           **THE COURT:** I was wondering: What's a paralegal and  
2 what's a clerk and what's litigation support and what's  
3 research and why should any of that be paid on an hourly  
4 basis?

5           **MR. HELLER:** Well, typically, case clerks are first  
6 or second year -- you know, some firms will call them  
7 paralegals, but it's certain -- the more junior version of the  
8 paralegal, and a paralegal.

9           **THE COURT:** You mean a lawyer or not a lawyer?

10          **MR. HELLER:** No, not a lawyer. More like a junior  
11 paralegal. Whereas a paralegal's more like a senior  
12 paralegal. I believe in -- yeah, that's --

13          **THE COURT:** Okay. And how about litigation support?  
14 What's that?

15          **MR. HELLER:** Litigation support are the technical  
16 people who manage the databases. For example, document  
17 databases. They do other work such as -- you know, it varies  
18 from case to case. In this case, it was primarily managing  
19 document databases and doing other work in terms of managing  
20 data.

21          **THE COURT:** They're employees.

22          **MR. HELLER:** They are employees of the firm. That is  
23 correct.

24          **THE COURT:** So why isn't that overhead?

25          **MR. HELLER:** We typically bill it as an hourly basis.

1 It's approved generally in almost every case that we work on.  
2 It is. And they're firm employees. They do a lot of  
3 different work. But it's not the kind of work that you would  
4 farm out necessarily to a third party.

5 **THE COURT:** No, that's what overhead usually is, is  
6 people you keep on staff to do your work. But I think you've  
7 told me what I need to know.

8 **MR. JACOBS:** May I add one thing to that?

9 **THE COURT:** Yes, but I have one last question.  
10 What's research?

11 **MR. HELLER:** Well, we have employees at the firm who  
12 do research work. So in this case, I don't know specifically  
13 what they did, but -- I'd have to go back and look at the  
14 record.

15 **THE COURT:** Would they be lawyers or other than  
16 lawyers?

17 **MR. HELLER:** Our research employees are not lawyers.

18 **THE COURT:** No kidding.

19 **MR. HELLER:** Those are not lawyers. They do things  
20 like -- an example would be wanting to see if there's a  
21 similar case that's been filed, or, Can you go find -- it's  
22 similar to paralegal work. But it's people who do sort of  
23 paralegal work of a research nature.

24 **THE COURT:** Okay. Thank you. And the new ones do  
25 junior paralegal work of a research nature and then the older



1 ones do senior paralegal work of a research nature?

2 **MR. HELLER:** Paralegals do work that goes well beyond  
3 research things, like organizing files, can be -- you know,  
4 there's all kinds of things that paralegals do. The  
5 paralegal/case clerk distinction is more an internal thing  
6 within the firm in terms of what we call them and when they  
7 reach the level of paralegal.

8 **THE COURT:** Okay. All right. Thank you.

9 **MR. JACOBS:** What I was going to add, your Honor, is  
10 this: The settlement administrator in this case, I believe,  
11 has been excellent. They've spent over seven million minutes  
12 on the phone with people. They have live operators. Give  
13 AT&T credit. They're paying for live operators. But we get,  
14 the lawyers get, a lot of calls from class members.

15 **THE COURT:** I have no doubt. I have no doubt that  
16 that is true. I have no doubt that that is true. But that's  
17 one of the reasons that courts can sleep well at night and  
18 still give people \$500 or \$700 or \$900 an hour for their time,  
19 because they're not worth that, but they don't come by  
20 themselves, they come with a whole law firm and with overhead,  
21 so we understand that a large slice of that doesn't go into  
22 the pocket of the lawyer but goes to pay for all the other  
23 things that keep the firm going. And I was just trying to  
24 understand if maybe paralegals and research and that sort of  
25 thing, and perhaps even answering phone calls, is part of what

1 the overhead ought to encompass.

2 **MR. JACOBS:** That's what I wanted to say. That's  
3 where I was going with that. That I believe that you don't  
4 relegate class members to some clerk. Lawyers respond to  
5 those people. And our firm consists of myself and my partner.  
6 It's inappropriate, I believe, for us to spend our time at our  
7 level responding to all calls. You take some at the beginning  
8 to kind of get a view from 5,000 feet of how the system's  
9 working, but then we have retained contract lawyers to respond  
10 to these people. And I have specified that no firm will  
11 charge more than \$125 an hour for that work. And that's how  
12 it has gone in on the fees.

13 **THE COURT:** Okay. All right. Thank you.

14 And I did want to say something else -- we're running out  
15 of time here because I have two more cases we have to hear  
16 before the criminal calendar -- but particularly in light of  
17 the FTC and the DOJ issues that have been raised, I wanted to  
18 say this: I have always found this to be a challenging case,  
19 and a complicated case. Because AT&T is one of the sort of  
20 overarching largest things we have in this country. It is  
21 regulated by all kinds of different entities and states and  
22 regulators. Its activities have grown over the century really  
23 to be so complicated. It's very hard for anyone to  
24 understand, much less an outsider. So this is a very  
25 challenging case. The legal theories were challenging. 23

1 million is an awful lot of people, and it would have been very  
2 difficult, I think, to handle on a class basis. Whether it  
3 even would have happened, I don't know.

4       However, I think this is an excellent settlement. I think  
5 the lawyers have worked very hard to achieve it. I think it  
6 actually provides a substantial benefit to the American  
7 public, because almost all of the American public is affected  
8 by AT&T at this point, one way or another, so I think you're  
9 all to be commended for that. The money that's coming back  
10 and the way that it's coming back is imperfect, but it's  
11 pretty good. I think it's unfortunate -- if there are  
12 collateral consequences to other law enforcement actions, I  
13 doubt they're going to be drastic because I can't think of any  
14 good reason why this settlement should impair the ability of  
15 law enforcement to seek fines or sanctions if people are -- if  
16 companies have violated rules or regulations. So I don't  
17 think that that's a real problem. It's a concern, but I think  
18 in light of everything else that's provided in this  
19 settlement, the settlement on balance is a fair and a good  
20 one. And it's not the kind of thing we often see. It's much  
21 more ambitious than that. So I commend you for that. I think  
22 it's really a job well done and I'm appreciative.

23       Everything else is submitted, and I will get you an order  
24 when I can. I may get back to you if I need more information  
25 on the fees. And I also would like, maybe on -- every two

1 weeks, I'd like to know how many claims have been requested,  
2 how many -- I mean, how many lists of charges have been  
3 requested, how many claims have been filed, and what the  
4 aggregate amounts are.

5 **MR. JACOBS:** We will do that, your Honor. We  
6 appreciate your time. You've been very gracious.

7 **THE COURT:** Thank you.

8 **MR. GOLDBERG:** Thank you, your Honor, for allowing me  
9 to appear by phone.

10 **THE COURT:** We're going to hang up on you now. Thank  
11 you, sir.

12 **MS. POLIDORA:** Thank you, your Honor.

13 **THE COURT:** Bye.

14 (Adjourned)

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17  
18 CERTIFICATE OF REPORTER

19  
20 I, Connie Kuhl, Official Reporter for the United  
21 States Court, Northern District of California, hereby certify  
22 that the foregoing proceedings were reported by me, a  
23 certified shorthand reporter, and were thereafter transcribed  
24 under my direction into written form.

25  
26 SS:// Connie Kuhl 

27  
28 Connie Kuhl, RMR, CRR  
Tuesday, November 19, 2013